



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**  
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SECRETARY

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**CORRESPONDENCE MEMORANDUM**

**DATE:** August 24, 2010

**TO:** Employee Trust Funds Board  
Teachers Retirement Board  
Wisconsin Retirement Board

**FROM:** Bob Conlin, Deputy Secretary

**SUBJECT:** Joint Informational Educational Topic: The Appeals Process

**This memo is for informational and discussion purposes only. No Board action is required.**

Attached, please find two outlines prepared by David Nispel, General Counsel for the Department of Employee Trust Funds, and Charlotte Gibson, Assistant Attorney General and counsel for the Employee Trust Funds, Teachers Retirement and Wisconsin Retirement Boards.

At the Joint Informational Session on September 16, Attorneys Nispel and Gibson will be presenting an overview of the Department's appeals process by which participants in the Wisconsin Retirement System (WRS) can appeal benefit determinations made by the Department or their employers. The presentations are intended to help Board members better understand their appeal-related duties and are being provided at the request of several Board members.

In addition, please see the new appeal-related educational video available on the Department's website. The video is designed to help WRS participants better understand the appeals process. It can be found at the following link:  
<http://etfmedia.wi.gov/main/Viewer/?peid=3e928c1ef3f9472d94dd201c1ebc5043>.

Attachments

Reviewed and approved by Rhonda Dunn, Executive Assistant.  
*Rhonda Dunn* 8-27-10  
Signature Date

Board	Mtg Date	Item #
Jl	9.16.10	3A



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***CORRESPONDENCE MEMORANDUM***

**DATE:** August 23, 2010

**TO:** Employee Trust Funds Board  
Teachers Retirement Board  
Wisconsin Retirement Board

**FROM:** David H. Nispel, General Counsel

**SUBJECT:** The Appeals Process Prior to Boards Receiving the Appeal

**I. Introduction**

- a) Generally, "Appeal" means the review of a determination made by the department conducted by a board under s. 40.03 (1) (j), (6) (i), (7) (f), or (8) (f), Wis. Stats.
- b) "Direct Appeal" relates to an employer's determination
- c) Nature of appeal determines which board hears the case
- d) Ch. ETF 11, Wis. Admin. Code, Ch. 40, Wis. Stats., and other ETF administrative rules

**II. Review Conducted by Department of Employee Trust Funds**

- a) Concerns of WRS member often resolved without a formal appeal being filed
- b) Appellant and department discuss whether the appeal can be resolved informally
- c) If informal resolution is not possible, referred to Division of Hearings and Appeals

**III. The Hearing Examiner: Primary Responsibilities**

- a) Determine the parties and the issues for each appeal
- b) Conduct the pre-hearing conference and evidentiary hearing, receive relevant evidence at the hearing, rule on all objections and motions, issue the proposed decision

#### **IV. The Prehearing Conference**

- a) Identify the specific issues to be resolved and any factual and legal disputes
- b) Identify witnesses including any expert witnesses
- c) Discuss reaching agreement on a Stipulation of Facts and relevant exhibits
- d) Discuss authority of the boards to hear and decide issues in the appeal

#### **V. The Hearing**

- a) Burden of proof rests with the appellant; presents case first
- b) Testimony of witnesses and receipt of other relevant evidence (exhibits, Stipulation of Facts)
- c) Rulings made on evidence offered at the hearing: what is admissible, what is hearsay, when objections are sustained or overruled
- d) Record of the hearing is developed
  - i) Stipulation of Facts
  - ii) Exhibits admitted and not admitted into evidence
  - iii) Transcripts (electronic or paper)

#### **VI. Briefs Filed Following the Hearing**

- a) Parties have opportunity to file briefs or letters
  - i) Reference to the evidence offered at the hearing
  - ii) Reference to the laws supporting arguments made
  - iii) Cannot contain new evidence or documents not previously offered at the hearing
- b) Briefs become part of the appeal record

#### **VII. The Proposed Decision**

- a) Findings of Fact, Conclusions of Law, Order
- b) Parties may file objections to the proposed decision (become part of record)

#### **VIII. Closing**

- a) Board staff provides appeal record to each board member
- b) Board meets to consider the appeal

## **CORRESPONDENCE/MEMORANDUM**

### **DEPARTMENT OF JUSTICE**

Date: August 20, 2010

To: Employee Trust Funds Board  
Teachers Retirement Board  
Wisconsin Retirement Board

From: Charlotte Gibson  
Assistant Attorney General

Subject: Overview of Board's Role in Deciding Administrative Appeals

#### **I. The Board function in an appeal.**

- a) Quasi-judicial.
- b) Closed session deliberation—parties not present during the deliberation.
- c) Review on the record—Board does not take evidence or hear testimony.
- d) Provide oversight of the initial decision making process—either that of the Department, or, in direct appeals, the participant's employer.
- e) Can be a big part of a board member's service, or a not-so-big part, depending on number of appeals.

#### **II. Who are the parties?**

- a) A person with a "substantial interest" in the issue to be decided.
- b) Except for direct appeals, the Department is a party, but may choose not to participate.
- c) In cases involving death benefits, the parties may include potential beneficiaries.
- d) In cases involving insurance benefits, the third-party administrator or health insurance program may be a party.

#### **III. The proposed decision.**

- a) The hearing examiner issues a proposed decision, but the Board need not adopt it, either in part or in full. The proposed decision is not entitled to deference by the Board.
- b) The hearing examiner may issue a final decision in specific types of cases, primarily ones involving time-barred claims. The Board normally does not see these cases.

#### **IV. The decisionmaking process.**

- a) Prior to Board meeting: read the record, identify the specific issues to be resolved and any factual and legal disputes.
- b) At Board meeting: counsel provides summary of case and a recommendation for deciding the appeal.
- c) Board discusses members' views of the facts and law at issue.
- d) Problems of hearsay:
  - i) what is hearsay?
  - ii) use in administrative proceedings.
  - iii) substantial evidence standard.
- e) Vote. Not all Board decisions are unanimous.
- f) Board's powers to correct "unfairness" are very limited.
- g) Options include remanding the appeal back to the hearing examiner to gather additional evidence that the Board finds is needed, or to consider a point of law that the parties did not address.

#### **V. What must the final decision include?**

- a) Findings of fact and conclusions of law. Should include facts establishing the Board's jurisdiction, including the date on which the appeal was filed.
- b) A statement of the disposition of the appeal: whether the decision of the Department or employer is affirmed, reversed, or remanded for further proceedings.
- h) Parties to the appeal.

#### **VI. What happens once the final decision is drafted?**

#### **VII. What are the losing party's options after the final decision issues?**

- a) Petition for re-hearing.
- b) Judicial review in circuit court.
  - i) Time to appeal.
  - ii) All appeals heard by a trial judge in Dane County.
  - iii) Review is on the record—no additional gathering of evidence.
  - iv) The Board's findings and conclusions of law are typically entitled to some level of deference.
- c) Appeal beyond the circuit court.